IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.102 OF 1988

The State of Maharashtra) ...Appellant

Versus

P.A.Mohammad Ali,)
Age:30 Years, Occ: Service,)
Sub Engineer, Maharashtra State)
Electricity Board,)
Kadav Section, Taluka Karjat,)
District Raigad.) ...Respondent

Shri A.S.Shitole, A.P.P for the Appellant.

Shri C.R.Sonawane for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : DECEMBER 12, 2006.

JUDGMENT:

1. By this Appeal, the Appellant-State of Maharashtra has taken exception to Judgment and Order dated 17th October, 1987 passed by the learned Special Judge, Raigad at Alibag. By the impugned Judgment and Order, the Respondent has been acquitted of the offences alleged against him under section 161 of the Indian Penal Code and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947.

2. In the year 1984-85, the Respondent-accused

was serving as a Sub-Engineer of Kadav section situated at village Kadav, Taluka Karjat, District Raigad. The Respondent was an employee of the Maharashtra State Electricity Board. As a Sub-Engineer, the Respondent-accused was required to perform the duty of maintenance of lines, maintenance of transformers, attendance of fuse call complaints and the preparation of prospective consumers estimate. In addition to the said duties, the Respondent was required to look after the electrification of the villages, if any, under his jurisdiction. He was entrusted with the work of transportation of material as per the requirements of his office. According to the case of the prosecution, there were about 46 villages including village Kothimbe under the jurisdiction of Kadav section.

3. According to the procedure adopted by the Maharashtra State Electricity Board, the consumers of electricity supply are divided into seven categories. Except for the category of high tension consumers, the consumers belonging to all other categories are required to apply for new connection to the Sub-Engineer of a particular section. After receiving applications in prescribed format No.A-1, the Sub-Engineer is required to enter the same in the

auxiliary register maintained by him. The Sub-Engineer is then required to survey the place where power is required to be supplied and ascertain whether demanded load can be provided through the transformer. After the survey, he is required to prepare estimate and submit the same alongwith his recommendations to the Assistant Engineer of the Sub-division. The sanctioning authority for power connection is the Executive Engineer of the Division. The duty of the Assistant Engineer of the Sub-division is to scrutinise the estimate and recommendations of the Sub-Engineer before forwarding the same to the Executive Engineer.

4. Complainant Vasant Shintre was a resident of village Kothimbe. He was running a flour mill and oil mill on diesel engine. In the first week of November 1984, he contacted the Respondent accused in his office for understanding the formalities for obtaining electricity supply. The Respondent advised him to obtain no objection certificates from Village Panchayat, Panchayat Samiti and the District Small Scale Industries Centre. After procuring the no objection certificates, the complainant approached the Respondent. The Respondent obtained from him an application in Form A-1 in triplicate together with

the certificates. After submitting the Application form, the complainant asked the Respondent as to when he would get the connection. According to the complainant, the Respondent informed him that the transformer through which connection was to be given had burnt and therefore, he was not in position to say as to how much time it will require to provide the connection. The complainant then enquired with the Respondent as to what amount was required to be paid to the electricity board for obtaining the connection. The Respondent accused told him that a sum of Rs.1155/- by way of deposit, certificate charges, agreement etc was required to be paid. When the complainant again asked the Respondent as to whether he would get the connection at an early date, the Respondent demanded an additional amount of Rs.1,000/- for himself by way of bribe for expediating the work. When the complainant showed his inability to pay the amount, the Respondent insisted for payment of that amount and stated that unless he received the amount, he would not work. The Respondent called him at village Chandai where some work of electricity power was going on. On the very day, the complainant approached the office of Anti Corruption Bureau of Thane and lodged a complaint against the Respondent. The Police Inspector Shri J.P.Pawar (P.W.No.5) who

recorded the complaint called two panch witnesses who were government servants in the office of Deputy Commissioner Sales Tax, Thane. The complainant informed the panch witnesses that the Respondent accused had demanded from him bribe amount of Rs.1,000/- for expediating the grant of power supply to his flour mill. A sum of Rs.1,041/- was found by the panch witnesses in the right trouser pocket of the complainant. According to the case of the prosecution, anthracene powder was applied to the ten currency notes of Rs.100/-. A trap was laid. The raiding party proceeded for conducting the raid. The raiding party arrived at village Kadav around 4.00 p.m. The complainant and one of the panch witnesses went to the office of the Respondent and the same was found to be locked. As it was found that the Respondent accused was not likely to return to the office, the trap was withdrawn. Thereafter, the members of the raiding party alongwith the complainant as well as the panch witnesses went near Tata Power House. The currency notes which were marked were placed in an envelope which was sealed under the signature of both the panch witneses and the Police Inspector Shri Pawar. The complainant was instructed to contact the Respondent on the next morning and in case he again demanded the bribe amount of RS.1,000/-,

he was told to contact Police Inspector Shri Pawar.

5. The complainant could not contact the Respondent as he was not available in the office on 19th January, 1985 and 20th January, 1985. On 21st January, 1985 the complainant was called by the Respondent at his residence. At that time, the Respondent asked the complainant whether he had brought the amount. The complainant told him that he was not having the amount at that moment. The Respondent asked the complainant to see him in his house at 9.00 a.m in the next morning. The Respondent assured the complainant that he would submit the papers of the complainant to superiors with his recommendations. Immediately, the complainant contacted Inspector Shri Pawar. A supplementary statement of the complainant was recorded and a trap was arranged against the accused. The complainant was again called in the office of the Anti Corruption Bureau where panch witnesses were also called. All formalities of taking search etc were completed. The complainant was instructed to introduce one of the panch witness as his cousin to the Respondent. The complainant was told to give signal to the members of the raiding party by moving his both hands over hair after handing over the marked currency notes to the

Respondent. On the next day, trap was laid. The complainant and one of the panch witnesses started walking towards residence of the Respondent. The other members of the raiding party followed them. According to the case of the prosecution at about 7.45 a.m, the complainant alongwith panch witnesses reached the residential premises of the Respondent. The complainant gave a knock on the door when the Respondent opened the door and called the complainant inside. The complainant and panch witness were made to seat inside. The Respondent assured the complainant that he had kept the forms ready and after completing the same, he will forward the same to his superiors. The Respondent offered tea to the complainant and the panch witness. By making a gesture the Respondent asked the complainant whether he had brought the amount. At that time, the complainant took out ten marked currency notes of Rs.100/- treated with anthracene powder from the bush shirt pocket. The Respondent took that amount in his right hand and kept the same near table fan on the wooden table. He placed torch over the envelope as a paper weight. The complainant had some talk with the Respondent. The complainant walked out of the room. The panch witness was sitting there. When complainant reached outside the house, he gave pre-arranged signal

to the Police Inspector. The Respondent was caught by his both hands. The Police Inspector Shri Pawar took him inside the room alongwith panch witnesses and members of the raiding party. On seeing the police the Respondent's wife started crying loudly. Thereafter necessary formalities were completed by the police. The prosecution examined five witnesses in the trial.

6. P.W.No.1 Vasant Shintre, the complainant deposed as per the prosecution case. He was extensively cross-examined by the Advocate for the Respondent. I am referring to the cross-examination of the said witness in the later part of this Judgment. P.W.No.2 is Vishnu Chintu Muthe. He is the panch witness who accompanied the complainant to the residence of the Respondent. P.W.No.3 is one C.N. Aswathnarayana Rao who was at the relevant time working as a Assistant Engineer of the Maharashtra State Electricity Board. He was superior officer of the Respondent. One Shri Mangesh Wagale was examined as prosecution witness No.4 who was the Chief Engineer of Bombay Zone of the Maharashtra State Electricity Board. The Investigating Officer Shri Jijabhau P. Pawar was examined as P.W.No.5.

7. The learned A.P.P appearing for the Appellant submitted that evidence of the complainant and other witnesses and especially P.W.No.2 and P.W.No.5 clearly establish the demand of illegal gratification by the Respondent and the acceptance thereof. He submitted that it is clearly established that the illegal gratification was accepted by the Respondent for showing the complainant a favour. He submitted that the evidence of the complainant (P.W.No.1) and the panch witness (P.W.No.2) was very consistent which established the guilt of the Respondent beyond reasonable doubt. He submitted that there was no reason to hold that the evidence of the witnesses examined by the State and especially the evidence of the complainant and panch witnesses was not satisfactory. He submitted that except for the conclusion of guilt of the Respondent no other conclusion was possible on the basis of the evidence on record.

8. The learned Advocate for the Respondent supported the impugned judgment and order and submitted that no interference was called for with the impugned order of acquittal. He submitted that even assuming that another view is possible, no case was made out for interference.

9. I have considered the submissions. The learned trial Judge has found that the complainant had not complied with all the conditions required for sanctioning new power line in his favour. The learned Judge found that the Block Development Officer had refused to issue no objection certificate.

10. In the cross-examination of the complainant he has admitted that he was fully aware about the procedure for obtaining electricity connection. He has admitted that on 16th January, 1985 he was aware that the Respondent had no power to grant electricity connection.

11. It must be noted here that initially a trap was arranged on 17th January, 1985. However, on that day the trap was not successful as the Respondent did not turn up in his office. According to the case of the complainant till 20th January, 1985, the Respondent was not available and therefore, on 21st January, 1985 he visited the residence of the Respondent at village Mudre. It is surprising that assuming that the Respondent had demanded a bribe of Rs.1,000/- he was not keen on taking amount and infact it is the complainant who went to his house. It must

be noted here that even according to the case of the complainant after the Respondent accused accepted the currency notes, the Respondent kept the envelope containing the of notes on a table. Thereafter, the complainant went outside the room for giving predetermined signal.

12. Thus, a trap which was laid initially was a failure and new trap was required to be laid few days thereafter.

13. I have perused the evidence of the panch, i.e P.W.No.2. In examination-in-chief, the panch witness has no doubt supported the prosecution case.

14. If the evidence on record is analysed, it is very clear that the complainant was not in possession of all the requisite documents on basis of which recommendation could have been made by the Respondent. After going through the evidence, at highest it can be stated that the prosecution established the first demand made on 16th January, 1985. However, it must be remembered that at the time of second trap, even as per the case of the prosecution, the notes treated by anthracin powder were kept on a table. Even according to the version of P.W.No.1 and 2, at the time of the

second trap there was no specific demand made by words by the Respondent. According to the P.W.No.1 and 2 the Respondent by making a gesture inquired whether the money was brought. The demand made by the Respondent on 22nd January, 1985 is not at all established. The demand was made allegedly for expediating the grant of electricity connection to the complainant.

15. After considering the evidence the learned Special Judge has disbelieved the case of the prosecution. Considering the evidence on record it is obvious that the said conclusion is a possible conclusion. Even if submissions of the learned A.P.P are accepted, at highest it can be said that it is possible to draw another conclusion on the basis of the same evidence. An order of acquittal cannot be disturbed unless there are compelling reasons to disturb the said order. It is well settled that the presumption of innocence in favour of the accused is strengthened by the order of acquittal. No perversity is shown in the impugned judgment and therefore, no interference is called for. Appeal is accordingly dismissed. The bail bond, if any, of the Respondent stands cancelled.

JUDGE